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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	Chapter 11
In re:)	Case No. 18-23538 (RDD)
)	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	(Jointly Administered)
)	
Debtors. ¹)	

**DECLARATION OF RAPHAEL GHERMEZIAN
IN OPPOSITION TO THE PROPOSED
ASSUMPTION AND ASSIGNMENT OF THE MOAC LEASE**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

1. I am a Senior Executive Vice-President of the Triple Five Group of Companies, LLC (“Triple Five Group” or “Triple Five”), parent company of MOAC Mall Holdings LLC (“MOAC”). I am the Chief Executive Officer of MOAC. MOAC and its affiliate entities own and manage Mall of America (the “Mall” or the “megamall”).

Witness Background

2. Triple Five Group of Companies is a multinational diversified conglomerate, development and finance group of companies. Triple Five and I have developed, own and operate North America’s first, second and soon, the third largest, tourism, retail and entertainment complexes: Mall of America, West Edmonton Mall in Canada, and American Dream in New Jersey.

Mall of America

3. Mall of America® is not just another shopping center but an international and national tourist attraction that attracts over 40 million annual visitors, employs 13,000 permanent job persons, and generates over \$1.2 Billion annual economic benefit to the State of Minnesota. Time magazine surveyed and reported that Mall of America draws more annual visitors than that of Disneyland, Epcot and Grand Canyon combined. Mall of America is the largest shopping mall in the United States, with 5.6 million square feet. The megamall is a complex which offers multiple entertainment and tourist attractions, including Nickelodeon Universe theme park, Crayola Experience, under water walk thru Sea Life Aquarium and Fly Over America, two premier hotels, the JW Marriott and Radisson Blu, and the corporate headquarters for international Cray Research. Recognizing the huge tourist draw power of the Mall of America the City of Bloomington, has engaged Goldman Saks and is raising \$250 million dollars to build and own a fully enclosed, year round, 250,000 square foot water park. This water park will be fully integrated into the north side of the megamall and is scheduled to break ground in 2020.

All of these components contribute to its status as an international tourist attraction and a key economic driver for the State of Minnesota. In 2017, Mall of America paid the most property taxes for a retail building in the country, according to Commercial Café's Top 100 Property Taxes in the U.S., paying \$30,125,552 in taxes. The importance of Mall of America to jobs, the local and state economy and its significance as an invaluable Minnesota asset to the hospitality, tourist and retail industry cannot be overstated. Its success is especially critical for the 13,000 employees who go to work at Mall of America every day. Mall of America is not just another shopping center, and it should not be evaluated as such; it should be evaluated as the world-class shopping center and international and national tourist attraction that it is.

Tenant Performance and Mix

4. Mall of America did not rise to this prominent regional and national position simply by renting retail space to any retailer who had the money or wherewithal to pay their monthly bills. Instead, Mall of America built its prominence by careful adherence to a curated mix of retail and entertainment components and their placement within the megamall, carefully developing and enhancing its brand image, fostering the megamall as an international and national tourist attraction, and careful choice and review of the operating performance of each prospective tenant with a focus on wholesome integrity. Tenants are placed within the Mall with strategic precision; a good tenant for one location in the Mall may not be a good fit in another area. The Mall's merchandising is specifically tailored, in varying degrees, for each of its five separate zones. Each potential tenant is analyzed for its best fit into a specific zone.

5. Even a tenant with appropriate financial abilities may be turned down because it does not match the performance standards and image expected in a retail operation at Mall of America. A financially qualified prospective tenant with poor operational performance would not be allowed into the Mall. Furthermore, a financially adequate prospective tenant, even with

substantial performance attributes, may be refused if it is out of harmony with the operation of the Mall as a first-class regional shopping center, such as if its retail operations do not properly mix with the tenants already in various sections of the Mall.

6. Department store anchor tenants, such as the space currently held by Sears, are expected to drive traffic into the Mall as part of their performance and principal purpose. A ground lease containing such financially favorable terms as the Sears Lease would never have been granted had Sears not been able to drive substantial traffic into Mall of America or if Sears was unable to operate as a first class department store.

Sears

7. At the time Sears entered into a lease with Mall of America in 1991, it was the premier retail operation in the world. In addition, in 1991, Sears carried out aggressive independent advertising, promoting its stores and operations. It filed full-page ads in the local newspapers, sent out catalogs to virtually everyone in America, and was able to generate significant traffic into the Mall because of its status, brand, image and mix of retail abilities and performance. It operated in a first-class manner. It met the tenant mix and department store needs of the Mall and was welcome in the family of Mall stores. In addition, other small retailers came to the Mall to sign leases often, in large part, because stores like Sears were part of the Mall.

8. Mall of America is an international and national tourist destination, but not because it sells merchandise. Any mall can sell merchandise. If that is all they do, they are failing, as many are across the country. Mall of America has one of the most recognizable brand names, is well-known throughout the world and has been visited by millions of people because of its careful adherence to its image, mix of retailers, brand, and the high level of performance and abilities of its tenants. The Mall's continued success depends upon careful adherence to

these principles. Tenant retailers certainly should have financial wherewithal to pay their bills. However, they must also be able to operate at a high level, contributing to the Mall's status as a high-end retail experience. If people simply want to order merchandise, they can do so now online. While we might make it look simple from the outside, the point of the Mall is not just to be a conglomerate of stores stacked one upon the other, but to give the highest level experience, the feeling of excitement, quality, fun and family-oriented premises so as to make the Mall one of the most popular retail operations in the world.

9. Currently many of the tenant leases at the Mall require that a department store be operated in the Sears' space. Consequently, who operates the Sears' space could be a cause of destroying Minnesota's "golden goose".

Sears Assumption and Assignment of Its Lease

10. In this case, Sears has now gone bankrupt and is in the process of liquidating its operations. In the past several years, Sears has become a liability to the Mall, has ceased being able to drive traffic, has ceased being able to operate in a high manner, and has ceased in its ability to contribute to the Mall or add positively to its brand and tenant mix or image throughout the country and the world. It is now proposing to transfer its lease to a company owned and operated by many of the same executives that formerly operated Sears, called Transform Holdco LLC ("Transform"). Basically Transform is acting as a scavenger, without regard to the tenant mix, the Mall's obligations to other tenants or the Mall's operation as a wholesome integrated retail tourist attraction, despite the Mall's value as an economic engine for the State of Minnesota.

11. According to them, Transform has no intent to operate any store or retail operation at Mall of America. Transform itself has no track record of running any kind of retail operation. The personnel currently running Transform are the same people who run Sears, which

is now in bankruptcy. It has shown no ability, therefore, that it can successfully run a high-level, significantly positive brand name that can operate as a department store within a shopping center with such a status and importance of Mall of America. It certainly cannot be denied that Transform cannot prove, and has no evidence to present to show, that it can match not only the financial wherewithal of Sears when it first entered its lease in 1991 at Mall of America, but also has no record whatsoever of its ability to perform, especially in any high manner expected of tenants at Mall of America. Nor is there any track record to show it can perform as Sears performed in 1991 when it first entered into its lease with Mall of America all of which are transfer requirements within the Lease.

12. Apparently, it is Transform's intent not to operate its premises under the lease at Mall of America, but rather to seek to find a subtenant, or more than one subtenant, to fill the space it claims to control at Mall of America. To date, we are unaware of any such tenant being proposed. There is no proposal that such tenant meet the tenant mix required at the Mall or meet the kind of performance abilities or financial wherewithal that Sears had when it first entered into its lease at Mall of America. There cannot be because they have no appropriate tenant available to sublease to as of the date of this declaration.

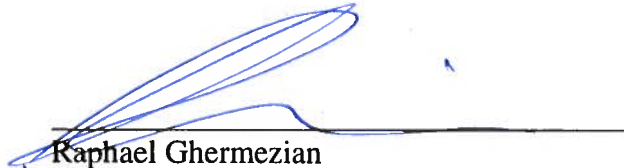
Conclusion

13. Putting the wrong tenants into Mall of America, without careful adherence in regard to the circumstances of the Mall, its sensitive wholesome integrity as an international and national tourist attraction and significant employer and economic engine in the local and state economy, could be disastrous. Signing any tenant that can pay the rent without further regard to the brand, sensitive nature of the Mall, its tenant mix and the shopping experience will not only damage the Mall itself, but all of the other tenants in the Mall as well.

14. It cannot be believed that Congress intended that this assignment of a lease can be allowed to damage the Mall as a tourist attraction and harm, not only the Mall itself, but all of the other tenants and the State of Minnesota's hospitality, tourist and retail industries as well.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August **16**, 2019



Raphael Ghermezian

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